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High-level task force on the implementation  
of the right to development  
Fifth session  
Geneva, 1-9 April 2009

### RIGHT TO DEVELOPMENT

**Report of the high-level task force on the implementation of the  
right to development on its fifth session  
(Geneva, 1-9 April 2009)**

**Chairperson-Rapporteur: Stephen Marks**

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## **I. INTRODUCTION**

1. The high-level task force on the implementation of the right to development convened its fifth session in Geneva from 1 to 9 April 2009, in accordance with Human Rights Council resolution 9/3.
2. The task force was established by the Commission on Human Rights in its resolution 2004/7 as endorsed by the Economic and Social Council in its decision 2004/249, within the framework of the intergovernmental open-ended Working Group on the Right to Development, in order to assist it in fulfilling its mandate as reflected in paragraph 10 (a) of Commission resolution 1998/7.
3. In its resolution 2005/4, the Commission requested the task force to examine Millennium Development Goal 8 and to suggest criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development.
4. The Human Rights Council, in its resolution 9/3, and the General Assembly, in its resolution 63/178, endorsed the workplan for the task force for the period 2008-2010, as recommended by the Working Group in its report on its ninth session (A/HRC/9/17, para. 43).

## **II. ORGANIZATION OF THE SESSION**

5. The session was opened by the Director of the Research and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Marcia V. J. Kran. Thereafter, the Chairperson of the Working Group on the Right to Development, Arjun Sengupta, delivered welcome remarks.
6. At its first meeting, on 1 April 2009, the task force elected by acclamation Stephen Marks as Chairperson-Rapporteur and adopted its agenda (A/HRC/12/WG.2/TF/1) and programme of work (see annex I).
7. At the session, the task force focused on the implementation of phases II and III of its work plan as reflected in paragraph 43 of the report of the Working Group.
8. The task force had before it a number of pre-session and background documents to inform its deliberations (see annex III).

## **III. STATEMENTS BY INSTITUTIONAL MEMBERS AND OBSERVERS**

9. The United Nations Development Programme (UNDP) welcomed the continued engagement of the task force in reviewing and improving the framework for evaluating the attainment of the Millennium Development Goals from the perspective of the right to development. Attention was drawn to the MDG8 Gap Report, issued in September 2008, which acknowledged progress on several counts, although important gaps remained in delivering on the global commitments in the areas of aid, trade, debt relief and access to new technologies and affordable medicines. Notwithstanding the weakening of the world economy, the report made clear that strengthened global partnerships and urgent responses were needed in the countdown

to 2015 to bridge the existing implementation gaps. Only a global, equitable, inclusive and stronger multilateral system of international cooperation working in the interests of developed and developing countries alike can generate the kind of collaboration that is needed to achieve internationally recognized goals.

10. The United Nations Conference on Trade and Development (UNCTAD) associated itself with the UNDP statement, noting that the issues on the agenda of the task force are very much at the heart of the mandate and work of UNCTAD. It regarded as a particular achievement that the task force had in recent years broadened the scope of its work.

11. In a statement on behalf of the Non-Aligned Movement, Cuba highlighted the importance of the operationalization of the right to development, as a priority, including through the elaboration of a convention as reaffirmed at the fourteenth summit of the Movement, in Havana, the inter-summit ministerial conference, in Teheran, and by the General Assembly. The current global economic and financial crises had proven once again the specific vulnerability of developing countries, and the need for them to fully exercise the right to development. The Movement hopes that the task force would be able to further refine the right to development criteria in a manner that reinforced the international dimension of that right, including in relation to the external obstacles to development which limit States' capacity to ensure the full implementation of all human rights for all. Accordingly, the Movement expected that the scope of the final version of the criteria would cover international cooperation, international trading and financial systems, including trade agreements, official assistance for development, debt relief, the elimination of poverty, technology transfer, capacity-building and other issues identified in Millennium Development Goal 8.

12. China noted that, without the development of developing countries, it was impossible to advance global economic development and difficult to address the current financial crisis. The Council should have a clear understanding of the importance of the right to development and the urgency for its implementation, instead of wasting time debating about whether the right to development entailed national or international obligations, individual or collective rights. China also welcomed the expansion of the thematic focus to debt relief and technology transfer and expressed the hope that the right to development criteria would be holistic and operational.

13. Friedrich Ebert Stiftung welcomed the report of the expert meeting on measurement issues relating to the right to development (A/HRC/12/WG.2/TF/CRP.7), and the endeavour of the task force to draw on the expertise of a broader group of academics in the implementation of its mandate. Attention was drawn to a publication issued by the Foundation in 2008 on the role of international law in implementing the right to development.

14. Nico Schrijver drew attention to the reference to an international legally-binding standard in General Assembly resolution 63/178 and referred to several legally binding instruments that incorporate important elements of the right to development. Given the Assembly's interest in a new legal instrument, he listed four options that could be explored: a new declaration to be adopted in 2011 on the occasion of the twenty-fifth anniversary of the Declaration on the Right to Development; a set of guidelines that can sometimes be of a binding nature; an optional protocol to one or both of the existing human rights covenants; and a separate human rights

treaty. Cuba, on behalf of the Non-Aligned Movement, recalled that the mandate of the task force did not include the elaboration of any type of recommendation or reflection on the legal form that a future instrument on the right to development should take. Cuba considered it to be clear from Assembly and Council resolutions that there should be a separate instrument in the form of a convention, to be proposed in due course, according to a process to be determined by Member States. The Chairperson-Rapporteur of the task force agreed that the task force did not intend to pronounce itself on a legal instrument, although several of its members had published their views on the topic. The Chairperson of the Working Group agreed that considering a legally-binding instrument was not currently the mandate of the task force and that it would be discussed by the Working Group. However, if this were to become its mandate, the task force would be well-placed to assist the Working Group.

#### **IV. PRESENTATIONS AND DISCUSSION**

##### **A. Continued dialogue with global partnerships reviewed at previous sessions**

###### **1. African Peer Review Mechanism**

15. Raymond Atuguba provided an update on the African Peer Review Mechanism, noting that, currently, 29 countries had acceded and six countries had completed their reviews. As examples of positive developments, he referred to the current constitutional review process in Ghana (the second time in 16 years, owing mainly to proposals after the review process for that country) and the improvement of data collection in Nigeria, an essential measure for the monitoring and evaluation of the activities of the Government. Mr. Atuguba concluded with recommendations on how the task force could use the Mechanism to enhance its work.

16. Noting the absence of a representative from organizations responsible for the Mechanism, the Chairperson of the Working Group suggested considering other modalities for dialogue, including a special mission to seek their views and cooperation.

###### **2. Paris Declaration on Aid Effectiveness**

17. Presenting the results of the survey conducted and related consultations held in the lead-up to the Accra high-level meeting held in September 2008, the representative of the Organization for Economic Co-operation and Development (OECD) noted the shortcomings on the ownership, inclusive partnerships and results agendas, as well as some progress made in relation to aid predictability, untying aid, approaches to fragile States and aid conditionality. There had been a perceptible change in the relationship between donor agencies and partner countries, characterized by transparency and a greater degree of trust and accountability. OECD stressed the importance of developing countries' ownership of the Paris Declaration agenda. The Chairperson-Rapporteur noted as positive outcomes the explicit acknowledgment of the primacy of development effectiveness as a measure of aid effectiveness and gender equality, human rights and environmental sustainability, all of which are part of the right to development criteria.

### **3. Economic Commission for Africa/Organization for Economic Cooperation and Development –Development Assistance Committee Mutual Review of Development Effectiveness**

18. The presentation by OECD focused on the purposes, key features and recent developments of the Mutual Review of Development Effectiveness process. For the past three years, OECD and the United Nations Economic Commission for Africa (ECA), in close collaboration with the New Partnership for Africa's Development (NEPAD) Secretariat, conducted the second review, the result of which was submitted in a summary report to the NEPAD Heads of State and Government at the African Union Summit in January 2009. Key future priorities for Africa and its partners included continued efforts on political and economic reform, focus on growth and achievement of the Millennium Development Goals, and acceleration of regional integration. For development partners, it is important to ensure delivery on existing commitments made on aid volume and aid effectiveness. OECD noted the importance of supporting Africa's interest in negotiations on trade and climate change and stronger African representation in international policymaking processes.

### **4. Cotonou Agreement**

19. In its presentation, the European Commission highlighted the key priorities of the Cotonou Agreement, including poverty eradication and sustainable development and its consistency with the right to development and human rights approach to development. With regard to the economic partnership agreements, the European Commission clarified several points to dispel misconceptions and factual inaccuracies, including as reflected in the study by a task force consultant (A/HRC/12/WG.2/TF/CRP.3). Despite the lack of explicit reference, the European Commission was of the view that the economic partnership agreements sometimes build on the right to development through reference to good governance, rule of law, social dialogue, cooperation with social partners, cooperative decision making, observance by both sides of core labour conventions and environmental provisions.

20. Mr. Schrijver reported on the technical mission conducted by the task force on 25 and 26 March 2009 in Brussels and on the valuable discussions held at the Directorates for Development and Trade, Europe Aid, as well as with individual experts and representatives of non governmental organizations. Regrettably, the task force was unable to meet with the African, Caribbean and Pacific States secretariat and members and thus aimed to conduct the second part of the mission before the end of April in order to include their views in the assessment of the Cotonou Agreement. During the mission, the task force noted the concern of African, Caribbean and Pacific countries, experts and non-governmental organizations representatives with respect to (a) the actual decision-making power among partners of the Cotonou Agreement; (b) the possible negative impact on the African, Caribbean and Pacific countries of the waiver of their treatment more preferable than the generalized system of trade preference; and (c) coherence in European Union policies in development, trade, agriculture, fisheries and human rights. Mr. Schrijver agreed with the European Commission on the positive aspects of the Cotonou Agreement as well as the relation between the economic partnership agreements and the Cotonou Agreement in that the latter provides an umbrella agreement in integration of human rights.

21. In the absence of the consultant, Mr. Schrijver outlined the study on the Cotonou Agreement. The key conclusions and recommendations of the report included the need for additional financing to African, Caribbean and Pacific countries and a clear human rights framework underpinning all economic partnership agreements, especially in the context of the global crises, and the need to take full account of the right to development.

22. During the ensuing discussion, the Geneva office of the secretariat of African, Caribbean and Pacific countries stressed that they needed technical support to develop their capacity to integrate the right to development as they prepared for the mid-term review of the Cotonou Agreement.

23. Mr. Schrijver stated that, while punitive measures, such as the withdrawal of trade preferences, may at times be justified in response to human rights violations, a positive approach may be more instrumental to contribute structurally to the realization of the right to development. Positive measures to create an enabling environment could include trade diversification, aid for trade, and support for trade unions and institutional capacity-building. With regard to economic partnership agreements and human rights, he noted that, even without the inclusion of an explicit reference to human rights in each agreement, human rights are part of economic partnership agreements owing to the overall applicability of human rights provisions included in the Cotonou Agreement.

24. The European Commission clarified that, while economic partnership agreements are not explicitly conditional on the observation of human rights, the Cotonou Agreement allowed for the suspension of all its provisions, including agreements, in the event of human rights violations. He underlined, however, the complexity of using failure to respect human rights as a condition for withdrawing aid or removing trade preferences without negatively affecting the most vulnerable groups in the country concerned. The European Commission considered pertinent many of the additional criteria suggested by the consultant's study, even though the reasoning for reaching such a suggestion might be open to challenge. Those criteria concerned climate change, democratic scrutiny, protection of women and other vulnerable groups, as well as methodology for benchmarking to assess the compliance of agreements with the right to development. The European Commission cautioned against rushing to free trade, and emphasized the need to move progressively towards freer trade with sensitivity to negative consequences, which could affect certain sectors in each country. It was also pointed out that there had been resistance among developing countries to discuss the integration of trade and development with human rights. However, the debate changed over time and the European Commission expected to work towards a more coherent policy approach for mutual reinforcement of trade, development and human rights.

## **B. Assessment of additional global partnerships and dialogue with the Common Market of the South**

25. Referring to the technical mission to the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, the Global Fund to Fight AIDS, Tuberculosis and Malaria, and the Special Programme for Research and Training in Tropical Diseases, conducted in November 2008, Stephen Marks noted that, although these partnerships were generally not involved with United Nations human rights mechanisms, their engagement exceeded the

mission's initial expectations in terms of willingness and interest in opening dialogue. The conclusion of the mission report identified several entry points for convergence between the right to development and the work of these partnerships.

## **1. Intergovernmental Working Group on Public Health, Innovation and Intellectual Property**

26. In his presentation, the Executive Secretary of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property explained how the Working Group had evolved through an international debate on the relationship between intellectual property rights, innovation and public health, against the backdrop of efforts to reduce poverty and improve access to health care. The WHO Commission on Intellectual Property Rights, Innovation and Public Health, established in 2004, published a report in 2006, in which it concluded that intellectual property rights provided important incentives for the development of new medicines and medical technologies, but were an effective incentive when patient populations are small or poor. In May 2006, the World Health Assembly established the Working Group to develop a global strategy and plan of action for needs-driven, essential health research and development relevant to diseases that disproportionately affect developing countries, to promote innovation, build capacity, improve access and mobilize resources.

27. Lisa Forman presented the findings of her study (A/HRC/12/WG.2/TF/CRP.5), which identifies several areas of synergy between the Global Strategy and Plan of Action and the right to development, including broad-based participation and consultations in the development of the Strategy and Plan and the establishment of monitoring, evaluation and reporting systems. Some aspects of the Plan were found to be inconsistent with the right to development, including the failure to caution against Trade-Related Aspects of Intellectual Property Rights (TRIPS) plus rules, certain limitations on the participation of non governmental organizations and the genuine accessibility of web-based hearings, as well as the purely quantitative nature of the indicators. The Working Group was an important policy initiative with the potential to advance the realization of the rights to development and health, and recommended that inter alia, explicit language be added to reflect the right to health in the Global Strategy and Plan of Action, the recognition of access to essential medicines in the fulfillment of the right to health in national constitutions and international development policies be assessed and greater inclusion of developing countries in evaluating the progress made against the goals of the plan.

28. Ms. Forman noted that some concerns had been expressed about the limitation of policy flexibility under the TRIPS agreement, even though that agreement includes a range of flexibility arrangements, and the Doha Declaration of 2001 confirmed that the legal right of States to use flexibility measures was safeguarded. However, the use of flexibilities in practice remains contentious.

29. Responding to comments by Sakiko Fukuda-Parr and James Love, WTO agreed that, since the adoption in 2001 of the Doha Declaration, which is fully supported by both developing and developed countries, flexibilities are broadly accepted, although there was a need for further capacity-building of developing countries on the implementation and use of TRIPS flexibility clauses.



30. UNCTAD introduced its role in access to medicines and the right to development. It is a stakeholder in the Working Group's Plan of Action and plays a key role in the transfer of technology and the development dimensions of intellectual property. It referred to an initiative by Germany that it supported, to encourage local production of generics in or by developing countries. Such initiatives were highlighted in the Plan of Action and fit the right to development concept. UNCTAD provided assistance on regulatory aspects and technology transfer issues.

31. The Executive Secretary of the Working Group clarified that the Global Strategy and Plan of Action had been adopted by a resolution of the World Health Assembly and as such was not legally binding, but as a collective decision of WHO Member States reflected their commitment to act accordingly. While not tasked to coordinate stakeholder engagement, the secretariat of the Working Group actively interacted with non governmental organizations and the private sector. The Global Strategy and Plan of Action had been negotiated by Member States, and, in specific aspects, they regarded health-related industries as stakeholders.

32. The task force was also informed about the work of the World Intellectual Property Organization (WIPO) in the field of public health, which focuses on how the intellectual property system can contribute to innovation and access to medicines. Noting the importance of the Global Strategy and Plan of Action, observers expressed concern at the disproportionate positions of developing and developed countries in negotiating trade agreements, continued obstacles to access to medicines and the use of TRIPS flexibilities, such as in the recent seizure by the authorities of the Netherlands of generic drugs being trans-shipped from India to Brazil. In this context, it was suggested that the task force consider adding criteria on implementing the right to health through access to essential medicines and a rights-sensitive pricing policy.

## **2. Special Programme for Research and Training in Tropical Diseases and the Global Fund to Fight AIDS, Malaria and Tuberculosis**

33. The Special Programme for Research and Training in Tropical Diseases was represented by the Head of the Drug Discovery and Product Innovation Unit, who explained that the Programme rested on three strategic functions: stewardship, empowerment and research on neglected diseases. Its main focus was on the first three principles of the Global Strategy and Plan of Action: setting priorities for research and development; promoting research and development; and building and improving innovative capacity. He described the extensive collaboration between the Programme and the pharmaceutical industry in developing drugs to treat diseases affecting people in the world's poorest regions. A key strategy of the Programme relates to empowerment by extending capacity for product innovation in developing countries. He highlighted a series of global networks to enhance capacity, and regional networks to promote greater innovation. Another strategy related to empowerment through research, with a focus on access to health care for poor communities. Community directed interventions had been a particularly effective participatory research approach, which began by addressing river blindness, and had proven effective in approaching a variety of health concerns affecting low-income areas.

34. James Love presented the outcomes of his research on the Programme and the Global Fund to Fight AIDS, Tuberculosis and Malaria (A/HRC/12/WG.2/TF/CRP.4). The Programme

has progressively expanded its scope, but not on the wider range of research issues that are specific to resource-poor settings, such as the availability of certain treatment regimes and the infrastructure required for effective access to health care in poor tropical regions. With regard to the Global Fund, the consultant emphasized its transparency, commitment to good governance and sensitivity to human rights concerns, while noting some limitations of its programming. He also referred to the new Innovation and Access paradigm, which focused on developing new “open source” models, such as the use of collective management of patent rights to expand access to technologies. Against the existing right to development criteria, both the Special Programme and the Global Fund could be regarded as consistent with right to development principles. Upon closer scrutiny, through the development of supplemental criteria, the Programme could be evaluated more critically. Such criteria would include whether the initiatives are supportive of a biomedical research and development treaty, separation of research and development initiatives from drug prices, and support for a patent pool and overall support of transparency in patent licensing arrangements.

### **3. Common Market of the South**

35. Paraguay, currently holding the presidency of the Common Market of the South (MERCOSUR), reiterated the interest of MERCOSUR to maintain a dialogue with the task force. The value MERCOSUR attached to human rights was reflected in the fact that high officers from human rights and ministries of foreign affairs of MERCOSUR countries were currently meeting in Paraguay, and consideration of the prospective dialogue with the task force was on the agenda of that meeting.

### **4. Development Agenda of the World Intellectual Property Organization**

36. The Acting Director for the WIPO Development Agenda presented background information on the Development Agenda, including recommendations on mainstreaming the development dimension, interfacing intellectual property and competition policy, and transfer of technology to developing countries.

37. UNCTAD noted that treaty provisions on transfer of technology are not obligatory, but rather couched in terms of best efforts to transfer technology. One major exception was article 66.2 of TRIPS agreement, which obliges developed countries to provide incentives for the transfer of technology to least developed countries. It is important to assess the extent to which this provision is being implemented from a right to development perspective.

38. WIPO considered that the patent system supported rules-based innovation and recalled that there were millions of patents in the public domain, freely available for further invention and innovation. However, many developing countries cannot benefit from these patents and it was time for these countries to benefit, which is what the development agenda sought to achieve.

### **5. Clean development mechanism**

39. In the absence of a representative from the secretariat of the United Nations Framework Convention on Climate Change and of the Kyoto Protocol, UNCTAD provided a historical

background on the clean development mechanism and the key principle of common but differentiated responsibilities among its parties.

40. Noting that there was a strong human rights dimension in climate change issues in general, Mr. Schrijver referred to the Convention on the Rights of the Child and the instruments on climate change, which make frequent reference to the rights of future generations and the studies conducted by OHCHR and several research institutes on the human rights dimensions of climate change. He suggested that the task force consider what contribution it could make to relevant forums in this regard, including the upcoming Climate Change Conference to be held in Copenhagen.

41. UNESCO argued for consideration of the ethical questions involved in technology transfer, such as those arising in relation to the transfer of polluting technologies to developing countries.

42. UNCTAD noted a close connection between the mechanism, climate change and the right to development. Small island States, such as Maldives and Vanuatu, may be less patient in discussing this as the sea levels were rising and climate patterns were changing visibly. Their right to exist was at stake. At the United Nations Climate Change Conference in Bali, the Prime Minister of Papua New Guinea emphasized the right to exist and the right to development. UNCTAD also noted that there were no criteria in the mechanism to ensure that investment benefitted a given group in society, but there was a focus on how much reduction a country could achieve, for which it was compensated with carbon credits.

43. Noting that the mechanism was largely about investment from the private sector, Ms. Solomon referred to the traditional weakness of international human rights law in regulating the private sector. Unless the human rights dimension was considered, the kind of problems traditionally seen in private sector investments in developing countries, which are inadequately regulated by host or home States risk being replicated. Concerning mechanism mitigation objectives, measuring success from reducing emissions did not reflect the other effects and external factors, for example on human rights and displacement. There seemed to be tension between climate change and human rights, and climate change mitigation strategies, for example in the case of building a dam intended to address clean energy needs, which at the same time involved major concerns about the displacement of indigenous peoples and the degradation of the local environment.

## **6. Multilateral Debt Relief Initiative and Heavily Indebted Poor Countries Initiative of the World Bank and the International Monetary Fund**

44. Participating via video conference, the World Bank reiterated its support for the continued work on the right to development criteria, including work on quantitative and qualitative assessment. While the World Bank had no formal position on the right to development itself, which it considered not formally binding, synergies could be identified between a number of right to development criteria and World Bank activities related to human rights, including (a) work on human rights and climate change; (b) continued work on human rights indicators; (c) work in the International Finance Corporation and the human rights impact assessment tool; (d) continued engagement as a member of the human rights task team of the OECD-Development

Assistance Committee, including on the issue of aid effectiveness; and (e) the establishment in 2009 of the Nordic Trust Fund, which would provide institutional frameworks and resources to explore how human rights can improve development outcomes in activities of the Bank. The Bank suggested that the task force continue to identify practical benefits and operational relevance of the criteria, focus on demonstrating the added value of the right to development in achieving poverty reduction, explore in concrete and empirical terms, the link between debt relief and human rights, and consider links between its work and that of the independent expert on the effects of foreign debt.

45. The World Bank presented the historical background of the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative. The former was launched in 1996 by the International Business Association, the concessional arm of the World Bank, and the International Monetary Fund (IMF), calling for voluntary provision of debt relief by all creditors, whether multilateral, commercial or bilateral. It aims at providing a fresh start for countries with foreign debt that places too great a burden on export earnings and fiscal revenues. The revenues freed up would be used to meet the expenditure needs of the countries, including in areas where human rights would be maintained and enhanced. The heavily indebted poor countries initiative was enhanced in 1999 to provide deeper and more rapid debt relief to a wider group of countries following extensive discussions with civil society organizations.

46. IMF provided detailed information on the amount of debt relief provided to low-income countries and outstanding debts, while noting that the debt owed to other multilateral institutions and other participants in the multilateral debt relief initiative, was considerably higher. The Fund listed some of the challenges faced in fulfilling these two initiatives: firstly, the remaining heavily indebted poor countries at pre-completion point faced challenges that were primarily non-economic, including maintaining peace and security, improving governance and effectively delivering basic services. Those challenges could not be eased by changes to the operational framework of the initiatives. However, some countries had recently made progress, and it was expected that two more would reach completion point before the end of 2009. Secondly, a major problem in implementing the initiatives was securing the full participation of other creditors. Finally, there was the question of ensuring that the initiatives remained fully financed. Despite successful completion of the initiatives, challenges remained for post-debt-relief countries, including that of ensuring long-term debt sustainability.

47. Expanding on the broader approach to introducing human rights into poverty reduction in heavily indebted poor countries, UNESCO made a presentation on its activities in selected countries. The programme included research work in West Africa focused on case studies, applying a social-cultural approach; human rights-based budgeting and human rights minimum norms to Poverty Reduction Strategy Papers; and gendered poverty. UNESCO conducted training sessions for national budget directors to inject a human rights element and encourage a different priority budget setting process, and prepared an idealized scheme for negotiations, based on human rights obligations, and supported strengthened accountability for local communities and the most vulnerable sectors of society. UNESCO suggested that the methods utilised in this work might be relevant to the development of the criteria.

48. The Chairperson of the Working Group noted that the World Bank and IMF had done considerable work to reduce the debt burden and introduced innovative programmes and schemes. A human rights approach would imply that, under any circumstance, expenditure should not be restricted to the extent that it amounts to violations of the rights to food, health, education, an adequate standard of living and social security. The inadequacy of social security provisions had created enormous hardship for the poor and vulnerable. The Chairperson enquired about the possibility of the World Bank, IMF and the human rights community working in partnership to develop out a debt re-scheduling programme, so that at least a minimum and basic expenditure was maintained to safeguard human rights.

49. The IMF representative agreed that certain types of spending had to be protected regardless of the overall situation, which he considered more a matter of fiscal policy than part of a mechanism of debt relief, because it involved governments designing their budgets consistent with their own objectives for development and ensuring that development partners did not interfere with those priorities. He also noted that the completion point triggers of the Enhanced Heavily Indebted Poor Countries initiative included requirements that the countries improve the delivery of certain social services, so that, together with the obligations of the poverty reduction strategy process, the resources freed up through debt relief would be used to advance the development agenda, through expenditures on key social areas. In response, Mr. Sengupta noted that, in a globalized economy, the extent to which States could restrain expenditure depended on the international system.

50. Mr. Marks referred to the position expressed frequently by the Committee on Economic, Social and Cultural Rights and the independent expert on the effects of foreign debt, namely, that policies of the international financial institutions and WTO are determined by the same Governments that have legal-binding obligations under the International Covenant on Economic, Social and Cultural Rights. This would require, for instance, that Millennium Development Goal targets and indicators effectively correspond to economic, social and cultural rights, that gender equality is mainstreamed, and that efforts are adequately directed towards marginalized and disadvantaged groups. The enhanced efforts to provide resources that are desperately needed by the poor, together with measures for debt relief, fell squarely within what the task force perceives as the realization of the right to development.

51. In response to a number of questions, IMF noted that the obligations of States towards their citizens included management of public resources in a way that fosters and supports their well-being, although it was sometimes difficult owing to lack of capacity and external constraints. He also noted that the role of conditionality was to address the adjustment needed if there was a problem in the policy framework of a country, or if an external shock was likely to persist and could be financed indefinitely in a sustainable way. In this case, conditionality was an agreement with the Government on what needs to be done, rather than an imposition. To break out of the debt cycle, developing countries need external assistance to accelerate their development; in the current financial crisis, they also need additional resources. A key concern shared by the World Bank and IMF was that there was a need to not only maintain but increase levels of financing, to avoid losing ground relative to the Millennium Development Goals.

### **C. Right to development criteria**

52. Mr. Marks provided background information on the mandate of the task force on the progressive development and refinement of the criteria, and read out the relevant recommendation made by the Working Group at its ninth session. In particular, the Working Group requested the task force to draw on the necessary expertise to make the criteria analytically and methodologically rigorous and to provide empirically-oriented tools to those involved in implementing development partnerships. It was therefore decided that a meeting of international experts should be convened to achieve these objectives.

53. On behalf of a task force consultant, Mr. Marks presented the outcome of the expert meeting (A/HRC/12/WG.2/TF/CRP.7) on methodological issues of qualitative and quantitative tools for measuring compliance with the right to development, held from 27 to 29 January 2009 at the Harvard Kennedy School. He referred to three sets of methodological challenges addressed at the expert meeting:

- (a) The criteria should be both useful tools to partnerships in the light of their technical mandate, and cover the full range of themes, raised by Millennium Development Goal 8;
- (b) The criteria should be a basis for both an evaluation of the effectiveness of partnerships and for dialogue, without judging the partnership;
- (c) The criteria should focus on both Millennium Development Goal 8 partnerships and anticipate the eventual preparation of coherent and comprehensive standards or guidelines not specific to Goal 8.

54. Friedrich Ebert Stiftung explained the study on applying the right to development criteria to a specific bilateral development cooperation mechanism, namely, the cooperation of Germany with Kenya, in which the matrix which was developed showed how important indicators were to respond to the criteria.

55. In the ensuing discussion, it was explained that there was no fundamental difference between the concepts of sub-criteria and indicators, both of which refer to tools of measurement of progress made to reach the goals set by the criteria. The inadequacies of targets and indicators of Millennium Development Goal 8 should not limit the task force in developing and applying criteria. The discussion revealed that the task force could not review all partnerships, but was expected to produce concrete advice and provide tools in the form of operational criteria and appropriate indicators that could be adopted by stakeholders for use on the ground. There was no partnership at the multilateral, regional or bilateral levels explicitly anchored in the right to development framework. Therefore, rather than using the partnerships to define right to development criteria, it should be the other way around.

56. The assessment of partnerships served to address certain gaps and introduced certain principles seen as important for reaching the objectives for which the partnerships had been created. The right to development addressed such principles, but went further than the areas covered by Millennium Development Goal 8. Considering the evolving priorities of the international community, the criteria should also address climate change and the global economic and financial crises.

## V. CONCLUSIONS

57. The task force is aware that its work is set in a new context of a historically unprecedented global financial crisis and enhanced urgency to mitigate global climate change. Both of these issues affect the priorities the task force identified for the implementation of the right to development.

58. The financial crisis has major consequences for the right to development. Each country and groups of people within countries face different consequences of the shocks created by the crisis in the form of capital flight, falling commodity prices for exports, shrinking export markets and rapidly falling remittances, all of which have direct and indirect effects on poor households and the ability of Governments to fulfil their obligations. While high-income countries are implementing counter-cyclical policies and stimulus plans, poor countries do not have the resources or the policy space to adopt similar approaches. States thus face an altogether new challenge today of taking individual and collective action for the right to development at the national and international levels. From the perspective of the right to development, the task force, to meet this challenge, believes that States should:

- (a) Refrain from imposing policies that impede the right to development;
- (b) Maintain and increase development assistance and other resource flows;
- (c) Refrain from trade protectionism;
- (d) Maintain priority agendas such as climate change and gender equity;
- (e) Take effective measures to prevent the recurrence of financial crises and to strengthen the effectiveness of global financial and economic governance.

59. Increasingly compelling scientific evidence and a better understanding of economic implications have moved the issue of climate change to the forefront of the international agenda. As the effects of climate change are already being felt globally, in particular by the most vulnerable countries and populations, an integrated international approach to addressing the challenges is crucial. Climate change poses a potentially permanent and serious threat to human development and prosperity, with implications for water and food security, agriculture, human health, biodiversity, migration, global trade and security. The serious implications of climate change for the realization of the right to development must be addressed as the task force continues to examine global partnerships and refine the criteria.

### A. Global partnerships

#### 1. African Peer Review Mechanism

60. The task force continues to view the African Peer Review Mechanism as an effective mechanism under NEPAD for a voluntary, independent, south-south peer review of the development agenda of African countries and the capacity of the Mechanism to provide implementable criteria for measuring development progress of African countries, which overlap several dimensions of the right to development. In this regard, the current process of revising the Mechanism assessment questionnaire in order to downsize it and make it a more efficient and

effective tool for assessment does not appear to take right to development criteria fully into account.

61. Noting that no new reviews were conducted and that the summit dedicated to the Mechanism in January 2009 concentrated on progress reports on the implementation of national programmes of action for countries that had already undergone review, the task force considers that the Mechanism's current focus on making recommendations to member countries and on ensuring the implementation of the recommendations that follow a country review constitutes an opportunity to introduce explicitly elements of the right to development, while developing clear prioritization, measurable indicators, better integration into existing development plans and broad-based policy review and monitoring of development progress.

## **2. Paris Declaration on Aid Effectiveness**

62. The Paris Declaration on Aid Effectiveness is viewed by many developing countries as a donor-driven instrument to the extent that its implementation and the assessment of its effectiveness are not sufficiently based on local ownership or mutual accountability.

63. The task force welcomes the reference in the Accra Agenda for Action to gender, human rights and sustainable development as consistent with the right to development, but regrets that the Agenda did not address more fully and directly the concerns mentioned in its previous reports.

## **3. Mutual Review of Development Effectiveness**

64. The value of the Mutual Review of Development Effectiveness from the perspective of the right to development lies in the effectiveness of the accountability mechanism and in enhancing the negotiating position of African countries with regard to aid effectiveness. The 2009 Review in Africa proved to be a useful exercise in assessing mutual accountability and development effectiveness, although many dimensions of the right to development, such as explicit reference to human rights, a focus on gender and priority for the vulnerable and marginalized populations, were not adequately addressed. The task force also concludes that policy priorities should be revised in the light of the increased needs of African countries due to the failure of the Doha Round and the current financial crisis.

65. The task force also concludes that a considerable number of the commitments could not yet be met and that the current economic crisis threatened to have a negative impact on development performance in Africa.

## **4. Cotonou Agreement**

66. In order to be consistent with the right to development, the conclusion and ratification of economic partnership agreements and the revision of the Cotonou Agreement should be transparent and involve parliamentary scrutiny and consultation with civil society. This applies equally to the African, Caribbean and Pacific States, the European Community and its Member States as well as to the European Parliament.



67. Consultations on the second review of the Cotonou Agreement, planned for 2010, will be an opportunity to appraise its human rights provisions and consider proposals consistent with the right to development criteria.

68. Because of their dependency on the export of commodities, remittances and foreign aid, African, Caribbean and Pacific countries are particularly vulnerable to rising food prices, declining commodity prices and the ongoing financial crisis, which greatly diminishes their prospects for realizing the right to development. These prospects would be enhanced if counter-cyclical and economic stimulus measures and effective aid for trade programmes could be put into operation.

69. Current negotiations for the conclusion of additional economic partnership agreements provide an opportunity to consolidate the human rights approach to development as enshrined in the Cotonou Agreement and to ensure that this approach applies to the agreements. The task force is concerned that the regionalization resulting from the agreements risk eroding the general negotiating position of African, Caribbean and Pacific States in their partnership relationship with the European Community. Supporting the development efforts of weaker trading partners should therefore be a priority.

70. The task force considers that the continuing dialogue with the partnership could benefit from the formal presence of the representative of the African, Caribbean and Pacific group of States in its meetings and from a meeting with one of the chief negotiators on behalf of the Caribbean group. Indeed, its mission and assessment of the Cotonou Agreement are not complete as long as it has not ascertained more fully the views of the African, Caribbean and Pacific States and particularly its secretariat. Therefore, the task force will return to Brussels in late April 2009 to complete the dialogue.

## **5. Intergovernmental Working Group on Public Health, Innovation and Intellectual Property**

71. The Intergovernmental Working Group on Public Health, Innovation and Intellectual Property and the Global Strategy and Plan of Action are a positive development with the potential of contributing significantly to target 8E of the Millennium Development Goals with respect to innovation of and access to health products for diseases in developing countries.

72. The task force attaches particular importance to the congruence between the eight elements of the Global Strategy and Plan of Action, designed to promote innovation, build capacity, improve access, mobilize resources and monitor and evaluate the implementation of the strategy itself, on the one hand, and the duties of States to take all necessary measures to ensure equality of opportunity for all in their access to health services, as required by article 8.1 of the Declaration on the Right to Development, on the other.

73. The Global Strategy and Plan of Action also seek action in a range of areas to achieve the accessibility, affordability and quality of medicines in developing countries as part of the normative content of the right to health. The task force acknowledges and supports the reference made by the Strategy and Plan to the right to health but regrets that it does not refer to the

obligations of article 12.1 of the International Convention on Economic, Social and Cultural Rights.

74. Moreover, the task force considers that the Global Strategy and Plan of Action should balance and coordinate the objectives of public health and the interests of trade and that the right to health should take precedence over commercial interests. In this regard, it reiterates its support, first expressed at its second session (E/CN.4/2005/WG.18/TF/3, para. 67), for general comment 17, adopted by the Committee on Economic, Social and Cultural Rights in 2001, and specifically the principle that States Parties should ensure that their legal or other regimes protecting intellectual property do not impede their ability to comply with their core obligations under the rights to food, health, and education. The task force notes with concern that the Global Strategy does not caution against the adoption of TRIPS-plus protection in bilateral trade agreements, and makes no other specific reference to the impact of bilateral or regional trade agreements on access to medicines.

75. Regarding the principle of participation, the task force welcomes the Global Strategy and Plan of Action provisions for web-based hearings, regional and inter-country consultations and the direct participation of non-governmental organizations and experts, as well as funding to enable the attendance of the least developed countries.

76. Regarding the principle of accountability, the task force welcomes as consistent with the right to development criteria the monitoring, evaluation and reporting systems of actions of Governments, as the primary duty-holders, and of industry, although some improvements could be made in the indicators used.

## **6. Special Programme for Research and Training in Tropical Diseases and the Global Fund to Fight AIDS, Tuberculosis and Malaria**

77. Although the right to development concept has not been explicitly used, the strategy of the Special Programme is rights-based in that its core features is the empowerment of developing country efforts through partnership and capacity-building. The task force supports further efforts to design and implement relevant programmes in ways that reflect the principles of the right to development and initiatives that explicitly use a human right to health framework.

78. The transparency and accountability of the Special Programme could be strengthened, particularly in the area of contractual agreements with pharmaceutical companies regarding pricing and access to medicines, which are currently not disclosed, broadening the scope of independent reviews for mutual accountability in areas such as the pricing of products developed by private partners.

79. The task force notes that the impact of the Special Programme on innovation with regard to infectious diseases – and thus its contribution to target E of Millennium Development Goal 8 – has been limited owing to the fact that it has been underfunded in relation to the magnitude of the challenge at hand. At the same time, the governance structures of the newer private foundations and non governmental organizations, which have access to far greater resources, do not provide for accountability to the public at large. It is of concern that the global efforts for

financing initiatives to fight diseases of the poor depend for the most part on sources outside public institutions and public accountability systems.

80. The task force welcomes as consistent with the right to development the support provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria for strengthening health systems in developing countries. The task force finds Global Fund programmes to be generally consistent with right to development principles, although it does not take an explicit rights-based approach. The task force also notes the challenges of monitoring mechanisms for mutual accountability.

## **7. Development Agenda of the World Intellectual Property Organization**

81. Established in 2007, the WIPO Development Agenda is an important initiative designed address the development dimensions of intellectual property and access to global technology for development, to which target 8F of Millennium Development Goal 8 refers. From the perspective of the right to development, the task force considers that the exploration of transfer of technology should not be limited to information and communication technology but should cover a broad range of transfer of technology issues, including intellectual property.

82. The task force considers that the value of the WIPO Development Agenda for the realization of the right to development lies primarily in the potential enhancement of transfer of technology to developing countries and related increase of access to knowledge and technology, in conformity with the human right of all “to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”<sup>1</sup>

## **8. Clean development mechanism**

83. Consistent with its broad approach to target 8F of Millennium Development Goal 8, the task force regards the clean development mechanism as an arrangement of value to the climate change dimension of the right to development insofar as the transfer of green technology can enhance the prospects for sustainable development in developing countries. In this regard, the task force attaches importance to article 4.1 of the Framework Convention on Climate Change, which requires all parties to promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases.

84. The task force regards the clean development mechanism as a significant example of stimulating sustainable development through emission reduction and of allowing industrialized countries some flexibility in meeting their reduction limitation targets. The registration of 1,391 projects in just three years is one impressive outcome of the mechanism. However, the task force is concerned that Africa accounts for only 2.27 per cent of registered projects.

85. The mechanism contains elements of equity, participation, empowerment and sustainability, which all underscore its relevance in the promotion of the right to development and the importance of close monitoring of these elements to ensure that it makes a positive contribution to this right.

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<sup>1</sup> Universal Declaration of Human Rights, art. 27.

86. In the upcoming Copenhagen meeting, at which the basis for the mechanism may be revised, the process represents an important moment whereby new elements could be conceived of in a way that contributes more fully to the right to development.

#### **9. Institutions responsible for the Heavily Indebted Poor Countries Initiative and the Multilateral Debt Relief Initiative**

87. The task force observes that the poverty afflicting least developed countries is exacerbated by an unsustainable debt burden and that the billions of dollars that those countries pay in their debt-servicing obligations divert a large part of scarce resources from crucial programmes of education, health care and infrastructure, severely limiting the prospects for the realization of the right to development.

88. The task force sees the success of well-conceived debt-relief initiatives as contributing in a significant way to the right to development and is aware that debt cancellation alone will not be enough for affected developing countries to benefit from the right to development. It must be accompanied by enhanced State capacity, improved governance and respect for human rights and promotion of equitable growth and the sharing of the benefits thereof.

89. Debt relief under the Heavily Indebted Poor Countries Initiative and debt cancellation under the Enhanced Heavily Indebted Poor Countries Initiative are highly relevant to the realization of the right to development, particularly in relation to articles 2(3), 4 and 8 of the Declaration on the Right to Development, in that they apply to the forgiven debt to stimulate and improve the infrastructure, health, education, housing and a range of other social purposes.

90. Another noteworthy connection between right to development and debt-relief initiatives is constituted by non-economic challenges, particularly those relating to issues of political instability, armed conflict and governance, all of which are impediments to the right to development.

#### **10. Common Market of the South**

91. The task force finds the MERCOSUR development agenda to be particularly relevant to the right to development, because it combines the goals of trade liberalization, economic cooperation and integration with objectives related to strengthening democracy and human rights in the region.

92. Similarly, the task force welcomes the MERCOSUR human rights agenda and its emphasis on the importance of promoting and guaranteeing economic, social and cultural rights, including the creation of indicators for their monitoring and assessment.

93. The above preliminary observations underscore the utility of establishing a dialogue with MERCOSUR and following up on the positive response to the letter sent in response to the request of the Working Group (A/HRC/9/17, para. 43 (c)).

## **B. Right to development criteria**

94. Right to development criteria are being revised in the light of the conclusions of the Working Group at its eighth session and the work programme of the task force, as outlined in the report of the ninth session of the Working Group (A/HRC/9/17, paras. 41-42). Specifically, the task force will present to the Working Group a revised list of right to development criteria along with corresponding operational subcriteria and outline suggestions for further work, including aspects of international cooperation not covered until then, for the consideration of the Working Group (para. 43 (c)).

95. The task force is thus not expected to submit its revised proposals until 2010; however, it has decided to share this work in progress on the proposed revision of the criteria with the Working Group in order to benefit from the considered views of Member States at its tenth session (see annex IV).

96. The task force recognizes the importance attached by the Working Group to the fact that any review of the proposed criteria should aim at elaborating a comprehensive and coherent set of right to development standards that could eventually take various forms, including guidelines on the implementation of the right to development, and evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement (A/HRC/4/47, para. 52). In this context, the analysis of global partnerships for development, with a view to covering the various aspects of Millennium Development Goal 8 from a right to development perspective, is a critical input to the exercise and is continuing throughout phase III with a view to fill remaining gaps or refining existing criteria further.

97. The task force recognizes the imperative of placing the identified criteria on a rigorous analytical foundation, both conceptually and methodologically. This foundation must exclude any arbitrariness or political bias in the selection of criteria. At the same time, the criteria must be sufficiently operational so that they can be meaningful to the various stakeholders, and in particular to the development community, to apply in their respective domains of work.

98. The Working Group requested corresponding operational subcriteria to accompany the revised criteria. The subcriteria are not included with the revised criteria (see annex IV), because the task force intends to draw on the necessary expertise to complete this part of its mandate in phase III after receiving feedback from the Working Group on the current draft of the revised criteria.

99. The proposed revised criteria are based on (a) the Declaration on the Right to Development; (b) the criteria elaborated by the task force and endorsed by the Working Group in its report on its seventh session; (c) the experience of the task force in applying the criteria to selected Millennium Development Goal 8 partnerships; (d) recommendations of the expert consultation on methodological issues; and (e) the papers commissioned by OHCHR to help the work of the task force at its fifth session.

100. The responsibility for realizing the right to development falls on several stakeholders; the extent of that responsibility may vary according to the criterion and the situation. The Declaration on the Right to Development enumerates the individual and collective obligations of

States though collective obligations may not be sufficiently explicit. The activities of international institutions and other bilateral and multilateral arrangements, especially those involved in the financing of development, including issues related to trade, debt, aid and technology flows, are highly critical for the realization to the right to development.

101. As a first step to set up a rigorous framework for selection of criteria and refining those that have been already proposed, the task force finds it useful to identify the principal components or attributes of the right to development, based on a reading of the Declaration, and to structure the criteria around them. The elaboration on the normative content of the right in the deliberations of the Working Group at its various sessions, the earlier follow-up mechanisms established after the adoption of the Declaration in 1986 and the reports of the independent expert on the right to development were also taken into account when identifying the components of the right. By selecting the principal components of a right, the process of identifying suitable criteria and their appropriate qualitative and quantitative measures is facilitated by a categorization that is clear, concrete and, perhaps, more tangible in facilitating such a selection.<sup>2</sup> The acceptability of the approach critically rests on being able to identify components that must be (a) mutually exclusive, that is, to the extent feasible they do not overlap in their scope; and (b) based on an exhaustive reading of the normative framework so that, to the extent feasible, the complete standard is reflected in the selection of the components of the right and its corresponding criteria, subcriteria or the relevant quantitative and qualitative measures that support the operationalization of the identified criteria.

102. The task force has identified three main components of the right to development, around which revised criteria and subcriteria can be structured. These are comprehensive human-centred development, enabling environment and social justice and equity. The proposed revised criteria have been identified for each of these components.

103. In its preambular paragraph, the Declaration on the Right to Development recognizes that development is a comprehensive economic, social, cultural and political process that aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting thereof. It recognizes the human person as the central subject of development and as an active participant and beneficiary of the right to development. It is holistic in terms of both development outcomes and the process underpinning that development. A comprehensive human-centred development, at an operational level, implies (a) indivisibility and interdependence of human rights in development such that the relevant standards on the civil and political rights and the economic social and cultural rights have to be seen as an integrated whole that needs to be reflected accordingly in the development strategy (art. 1(1), 6(2) and 9(1)); (b) the importance of not only the outcomes of the development process, which can be identified with the realization of all human rights, but also of the process of their realization (art. 1(1), 2 (1 to 3) and 8(2)) (in other words, a complementarity of the process and outcomes in the

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<sup>2</sup> This was the approach of OHCHR in the identification of indicators for promoting and monitoring the implementation of human rights for human rights treaty bodies. See, for example, HRI/MC/2008/3.

realization of human rights); and (c) a sustainable development process that promotes growth with equity and aims at a constant improvement of well-being (art. 2(3)).

104. The enabling environment component of the right to development follows from article 3 of the Declaration, according to which States have the duty to take steps, individually and collectively, to create the enabling environment, internationally and nationally, for the full realization of the right. In doing so, it stipulates that States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights (art. 6(3)). One related aspect is that, while acknowledging that the State is the primary duty-bearer of the right, the Declaration emphasizes the importance of international cooperation in the realization of the right to development (art. 4(2)).

105. The social justice and equity component or attribute of the right to development follows from the emphasis laid on eradication of all social injustices in the Declaration (art. 5 and 6(1)). Social justice is a vital aspect of the right to development framework, requiring action by national governments individually and collectively. It emphasizes the moral imperatives of eliminating inequalities among people and dismantling the institutional structures primarily related to the acts of omission and commission of the principal duty-bearers that help to perpetuate those inequalities at both the national and international levels. Ultimately, the realization of the right to development (art. 8(1)) should ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. There are at least three elements that may have to be encompassed in criteria on this attribute of the right to development: (a) a focus on non-discrimination and inclusion (art. 5), inter alia, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, unity and territorial integrity; (b) gender equality and rights of women in development (art. 8(1)); and (c) the importance of an equitable sharing of benefits from development. It also includes emphasis on social safety nets in mitigating hardships and dislocative effects during times of economic crisis, stress or natural disasters.

## VI. RECOMMENDATIONS

### A. Global partnerships

106. **The task force proposes continuing the dialogue with partnerships already reviewed in order to draw additional lessons from their compliance with the right to development criteria and to encourage these partnerships to integrate right to development principles. Specifically, the task force recommends:**

- (a) **A technical mission on the African Peer Review Mechanism to extend its dialogue to other African institutions, including the African Commission on Human and Peoples' Rights, with a view to ensuring that the country reviews and questionnaires, the preparatory process for the next high-level meeting on the Paris Declaration in 2011, and the national plans of action build on commitments of the African States concerned to the right to development;**

(b) An assessment of the Caribbean Forum of African, Caribbean and Pacific States-European Community economic partnership agreements and other such agreements with a view to making recommendations, if necessary, relating to the implementation of the right to development, in the light of preparation for the second review of the Cotonou Agreement;

(c) A return visit to the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property to discuss specific recommendations of the consultant that the task force has endorsed.

107. The task force also recommends that a dialogue be opened with:

(a) The WIPO Development Agenda with a view to providing input to the Conference on Intellectual Property and Global Challenges to be held in Geneva on 13 and 14 July 2009, including by participating in it;

(b) The United Nations Framework Convention on Climate Change on the clean development mechanism and to consider contributing to the Climate Change Conference in December 2009. In anticipation of that dialogue, the task force proposes that a study be commissioned on the right to development issues that arise in the context of climate change, including whether and how the poorest countries benefit from the clean development mechanism and suggestions regarding criteria and subcriteria thereon.

108. The task force reiterates the utility of holding a dialogue with MERCOSUR, and proposes, after receiving the official invitation from MERCOSUR, a technical mission to attend a meeting of high officers from human rights and ministries of foreign affairs of MERCOSUR countries, to explore experiences and best practices of MERCOSUR and Associate States on the implementation of the right to development.

109. The task force proposes to collect and analyse information on the Heavily-Indebted Poor Countries and the Multilateral Debt Relief Initiatives, through appropriate consultations with the World Bank and IMF and subject to their agreement, with a view to identifying the ways these programmes contribute to the implementation of the right to development.

#### **B. Further development and refinement of the criteria**

110. While recognizing that the ongoing application of the criteria through a dialogue with the institutions responsible for the identified partnerships contributes to the improvement of criteria and to promoting the implementation of the right to development, the task force gives highest priority to improving the criteria with a view to submitting, in 2010, a final set of criteria serving the purposes set out in relevant provisions of Council resolution 9/3.



111. **The task force reiterates the need to draw on the necessary expertise to make the criteria analytically and methodologically rigorous and provide empirically-oriented tools to those involved in implementing development partnerships in order to achieve the desired standard of criteria quality. Accordingly, the task force proposes to draft operational sub-criteria corresponding with the criteria and, for this purpose, to draw on specialized expertise, including from academic and research institutions and relevant United Nations agencies.**

## **Annex I**

### **AGENDA**

1. Opening of the session.
2. Election of the Chairperson.
3. Adoption of the agenda and programme of work.
4. Implementation of the workplan for the period of 2008-2010 endorsed by the Human Rights Council in resolution 9/3:
  - (a) Continued dialogue with the selected global partnerships which were reviewed at previous sessions;
  - (b) Assessment of additional global partnerships in the areas of access to essential medicines, debt relief and transfer of technology, as well as dialogue with MERCOSUR;
  - (c) Criteria for periodic evaluation of global development partnerships, as identified in Millennium Development Goal 8;
  - (d) Suggestions for further work.
5. Adoption of the report, including conclusions and recommendations.

## **Annex II**

### **LIST OF PARTICIPANTS**

#### **Members of the task force:**

Flavia Piovesan (Brazil)  
Nico Schrijver (Netherlands)  
Raymond Atuguba (Ghana)  
Sakiko Fukuda-Parr (Japan)  
Stephen Marks (United States of America)

#### **Institutional members:**

International Monetary Fund  
United Nations Conference on Trade and Development  
United Nations Development Programme  
United Nations Educational, Scientific and Cultural Organization  
World Bank  
World Trade Organization

#### **Experts/resource persons:**

James Love  
Lisa Forman  
Margot Salomon  
Rajeev Malhotra

The Chairperson-Rapporteur of the Working Group, Arjun Sengupta, attended the session as an observer.

#### **Observers:**

States Members of the Human Rights Council: Argentina, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Brazil, Canada, China, Cuba, Egypt, Germany, India, Indonesia, Japan, Malaysia, Mexico, the Netherlands, Pakistan, the Philippines, Qatar, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

Other States: Algeria, Belgium, Chile, Costa Rica, Côte d'Ivoire, Cyprus, the Czech Republic, Guatemala, Haiti, Honduras, the Libyan Arab Jamahiriya, Morocco, Paraguay, Portugal, Romania, Rwanda, Serbia, Singapore, Sweden, Thailand, Turkey and Venezuela (Bolivarian Republic of). The Holy See was also represented.

#### **United Nations bodies and intergovernmental organizations:**

African, Caribbean and Pacific Group of States  
European Commission  
Organization for Economic Cooperation and Development  
World Health Organization  
World Intellectual Property Organization

**Non-governmental organizations in consultative status with the Economic and Social Council:**

Cercle de recherche sur les droits et les devoirs de la personne humaine

Friedrich Ebert Stiftung

New Humanity

Organisation internationale de la Francophonie

Third World Network

### Annex III

#### LIST OF DOCUMENTS

<i>Symbol</i>	<i>Title</i>
A/HRC/12/WG.2/TF/1	Provisional agenda
A/HRC/12/WG.2/TF/CRP.1	Technical mission report, Global Partnerships on Access to Essential Medicines, Geneva, 12-13 November 2008
A/HRC/12/WG.2/TF/CRP.2	Technical mission report, Cotonou Agreement, Brussels, 25-26 March 2009
A/HRC/12/WG.2/TF/CRP.3/Rev.1	The Cotonou Agreement, Study by Maria van Reisen
A/HRC/12/WG.2/TF/CRP.4	The Global Fund to Fight AIDS, Tuberculosis and Malaria, The Special Programme for Research and Training on Tropical Diseases and the Right to Development, Study by James Love
A/HRC/12/WG.2/TF/CRP.5	Desk review of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property from a right to development perspective, Study by Lisa Forman
A/HRC/12/WG.2/TF/CRP.6	Implementing the Right to Development – A review of the task force criteria and some options, Study by Rajeev Malhotra
A/HRC/12/WG.2/TF/CRP.7	Methodological issues of qualitative and quantitative tools for measuring compliance with the right to development, Report on Expert Meeting, Cambridge, MA, USA, 27-29 January 2009
A/HRC/12/WG.2/TF/CRP.7/Add.1	Methodological issues of qualitative and quantitative tools for measuring compliance with the right to development: selected bibliography

## Annex IV

### RIGHT TO DEVELOPMENT CRITERIA

Interim draft version as revised at the fifth session of the task force, 1-9 April 2009

#### Comprehensive human - centred development

##### *Indivisibility and interdependence of human rights in development*

- (a) *The implementation of the right to development is measured by the extent to which the policies and initiatives of the relevant stakeholders draw on all relevant international human rights instruments, including those relating to the right to development, in elaborating the content of development strategies and/or partnerships and tools for monitoring and evaluating their implementation (Articles 3(3), 6, 9 (2), Criterion (b) modified);*
- (b) ... introduce into development policy and implementation a comprehensive approach to human rights, according to which civil, cultural, economic, political and social rights are treated as interdependent, indivisible and with the same importance and are used to define the development goals and the corresponding strategies, ensuring the harmonisation of policies in all aspects of the relationship between partners (Articles 2(3), 6(2), 9(1));

##### *Human rights-based process and outcome*

- (c) ... follow a human rights-based approach to development, and integrate the principles of equality, non-discrimination, participation, transparency, and accountability in its development strategies (Criterion (d));
- (d) ... promote and ensure free, meaningful and active participation of all individuals and groups – either directly or through freely chosen representatives – in the formulation, implementation and monitoring of policies designed for promoting development (Articles 2(3), 8(2));
- (e) ... make special effort to ensure the participation of weaker and marginalised sections of the society and affected populations that have traditionally been left out of the policy elaboration and implementation process (Article 8(1&2));

##### *Sustainable development*

- (f) ... provide for a fair distribution of development benefits as well as sustainable use and access to natural capital and resources, both for current and future generations. Preventing environmental degradation, resource depletion and

enabling mitigation of and adaptation to negative impacts of climate change are essential. (Article 2(3), Criteria (a), (q));

## **Enabling environment**

### *International cooperation and assistance*

- (g) ...ensure, individually and collectively, that appropriate and adequate human and financial resources and technology are available to formulate and implement comprehensive development strategies aimed at the full realisation of human rights (Articles 3(3),4, 6; Criterion (n));
- (h) ...contribute to the further development of a rule-based, open, predictable and non-discriminatory trading and financial system that recognises the need to enlarge the opportunities for developing countries in the global economy, as a vital means for furthering the implementation of the right to development (paragraph 46 of the Working Group report at its Seventh session E/CN.4/2006/26, paragraph 42 of the Ninth session of the Working Group report A/HRC/9/17; MDG8; Article 3(3), 4 and 7) ;
- (i) ... recognise mutual and reciprocal responsibilities among the partners, subject to effective accountability mechanisms, taking into account their respective capacities and resources with a special emphasis on the vulnerability of least developed countries. (Modified Criterion (f));
- (j) ...contribute to maintaining a stable global economic environment, especially by reducing the risks of international financial crises, and providing against volatility of commodity prices.

### *National policy space and autonomy*

- (k) ... respect the right of each State to determine its own development policies in creating an enabling environment at the national level in which nation states can pursue development policies in accordance with their own priorities and in a manner that is consistent with realizing all human rights, and ensuring fair distribution of benefits flowing therefrom. (Article 2(3)), Criterion (k) modified);

### *Rule of law and good governance*

- (l) ... promote good governance, the rule of law and effective anti corruption measures by establishing appropriate institutions, at the national and international levels, with a view to holding all relevant actors accountable for their efforts. (Articles 2, 3,10, Criterion (c) revised);
- (m)... create modalities and procedures to indicate responsibilities for action and establish institutionalized mechanisms for transparency in public reporting and

access to information, monitoring and evaluating their efforts, as well as provide effective measures for redress, both at national and international levels (Criterion (l));

*Peace, security and disarmament*

- (n) ... contribute to the prevention of conflicts and the maintenance of peace and security both between and within states, based upon respect for human rights and the firm conviction that the denial of the right to development is both a cause and a consequence of large scale political violence and instability; (Article 7)
- (o) ... ensure the respect and fulfilment of economic and social rights of vulnerable groups, particularly women and children, during armed conflict (Criteria (e), (m), (o));
- (p) ... integrate efforts aimed at the implementation of the right to development in post-conflict peace building and reconstruction;

**Social justice and equity**

*Non-discrimination and inclusion*

- (q) ... secure non-discrimination, without distinction of any kind, such as race, sex, language, national origin or religion (Article 5, 6(3), Criterion (d));
- (r) ... establish policy priorities that are responsive to the rights of the most vulnerable and marginalized segments of the population, with proactive measures to realize their human rights and their free and meaningful participation in the development process; (Article 5 and Criterion (e) modified);

*Gender equality and rights of women*

- (s) ... promote gender equality and the rights of women and girls, taking into account their increased vulnerability in times of economic crisis and armed conflict (Article 8(1); Criterion (i))

*Sharing the benefits of development*

- (t) ... provide for a fair and equitable distribution of the benefits of development (Articles 2, 6 & 8; Criterion: (q));
- (u) ... establish safety nets to provide for the needs of vulnerable populations in times of natural, financial or other crises (Criterion (o)).

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